IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 27TH SEPTEMBER 2007 / 5TH ASWINA 1929

CRP.No. 811 of 2007(E)

A.S. NO. 16/2003 OF SUB COURT, KASARAGOD,
O.S.NO.35/2001 OF PRL.MUNSIFF, KASARAGOD.

REVN. PETITIONERS/PETITIONERS/PLAINTIFFS 1 TO 4 & DEF. 2,7, & 8:

1. **K.M.MAHALINGA BHAT, AGED 56 YEARS,**
2. **K.M.VENKATESWARA BHAT, AGED 55 YEARS,**
3. **K.M.SRIKRISHNA BHAT, AGED 43 YEARS,**
4. **SAVITHRI, AGED 41 YEARS,**
   (ALL ARE THE CHILDREN OF LATE K.M.SHAMBATTA,
   RESIDING AT MALIGEMANE, KIDOOR VILLAGE,
   KASARAGOD TALUK AND DISTRICT, P.O.ICHALAMPADY,
   (VIA) KUMBLA.

BY ADV. SRI.K.SHRIHARI RAO.

RESPONDENTS/APPELLANTS/DEFENDANTS 1, 3 TO 6:

1. **K.M.GOVINDA BHAT, AGED 65 YEARS,**
   S/O. NARAYANA BHAT,
2. **SATHYANARAYANA BHAT, AGED 35 YEARS,**
   S/O. GOVINDA BHAT,
3. **SHIVASANKARA BHAT, AGED 31 YEARS,**
   S/O. GOVINDA BHAT,
4. **VIGNESWARA BHAT, AGED 29 YEARS,**
   S/O. GOVINDA BHAT,

C.R.P. NO. 811/2007-E:

5. UDANESWARA BHAT, AGED 28 YEARS,
S/O. GOVINDA BHAT,
(ALL ARE RESIDING AT MALIGEMANE, KIDOOR VILLAGE,
KASARAGOD TALUK AND DISTRICT, POST ICHALAMPADY,
(VIA) KUMBLA.

6. K.M.ISHWARA BHAT,
ENGINEER, AGED 60 YEARS, S/O. NARAYANA BHAT,

7. DHANARAJA BHAT, AGED 32 YEARS,
S/O. ISWARA BHAT, DOCTOR.

8. SRINIVASA, AGED 29 YEARS,
S/O. ISHWARA BHAT, ENGINEER, RESPONDENTS 6 TO 8
ARE RESIDING AT "ASHWINE", NO.409, LAYOUT
BONASWADE, BANGALORE-560043, KARNATAKA STATE.

BY

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 27/09/2007,THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.KRISHNAN, J

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C.R.P. No.811 OF 2007

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Dated this the 27th day of September 2007

ORDER

This revision petition is preferred against the judgment of the Sub Court, Kasargod in A.S.No.16 of 2003. The said appeal was preferred against the judgment and decree of the Munsiff's Court, Kasargod in O.S.No.35 of 2001. The trial court decreed the suit for an amount of Rs.23,792/- with future interest at 6% per annum from the date of plaint till payment. The brief facts necessary for the disposal of the revision are stated as follows: There was a partition deed in the family of the plaintiffs and defendants. As per the recitals in the document for the property situated in the Kuriya Village of Puthur Taluk the moolageni rent payable was 31 muras of rice per year. As per the terms of the said partition deed, A sharer was liable to pay the said rent to the landlord. To compensate the said payment of rent to the landlord C sharer was made liable to pay every year 84 pounds of areca and D sharer was also made liable to pay annually 168 pounds of areca. As per the Karnataka Land Reforms Act which come into force on 1.3.1974 the leasehold properties vest with the tenant and the

liability for payment of rent has come to an end. Now the question to be considered is that in the light of the cessation of liability of A sharer to pay rent to the landlord by virtue of the provisions of the Karnataka Land Reforms Act the other sharers who by virtue of the terms of the document are liable to compensate the A sharer be directed to do the same even after the said cessation of liability of the A sharer.

2. I had gone through the judgments of both the courts below and the appellate court reversed the finding of the trial court on the ground that there is frustration of contract. I do not feel that it is that doctrine which has to be applied in a case on the set of facts available. What is to be applied is the doctrine of justice, equity and good conscience. When by virtue of the terms of a document, one person is liable to pay certain amount to another person and in order to compensate such payment, the other sharers are made liable to pay certain amounts to that sharer, then when that liability of the first person ceases, automatically the doctrine of justice, equity and good conscience should apply and the reciprocating liability cast on the other persons have to be done away with. Admittedly the Land Reforms Act of Karnataka has come into force on 1.3.1974. The liability to pay rent has ceased to exist. There is no extra burden cast on that person. When it is so, as a logical corollary, the obligation cast on the other person

also should be directed to be cancelled. Though on a different ground, I agree with the finding of the appellate court that C and D sharers shall not be liable to pay anything to the A sharer by virtue of the subsequent development that had taken place. Therefore C.R.P. is dismissed.

M.N.KRISHNAN, JUDGE

Cdp/-